MT LEGISLATIVE HISTORY

Chapter 52 1981

Bill H _____ S 38 Original bill & hist. ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 04	✓C	Hearing Date(s) Jan 12	✓C
_____	___C	Feb 04	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 04	✓C	Feb 04	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 38

INTRODUCED BY TURNAGE

IN THE SENATE

January 5, 1981	Introduced and referred to Committee on Judiciary.
February 4, 1981	Committee recommend bill do pass as amended. Report adopted.
February 5, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading, do pass.
February 7, 1981	Correctly engrossed.
February 9, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 10, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurred in. Report adopted.
March 5, 1981	Second reading, concurred in.
March 7, 1981	Third reading, concurred in. Yeas, 90; Nays, 5.

IN THE SENATE

March 7, 1981	Returned from House. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 38

INTRODUCED BY TURNAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION, INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705, 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006, 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND REPEALING SECTION 72-3-608, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation of succession. (1) A person ~~for~~ his personal representative~~,~~ or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or ~~person--designated-to-take pursuant-to~~ appointee under a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written ~~instrument--within--the--time--and--at-the-place-hereinafter~~ provided renunciation under this section. The instrument shall:

(a) describe the property ~~or-part-thereof~~ or interest ~~therein~~ renounced;

(b) be signed by the person renouncing; and

(c) declare the renunciation and the extent thereof.

(2) (a) ~~The-writing-specified-in-subsection-(1)-must~~ An instrument renouncing a present interest shall be filed within 6 9 months after the death of the decedent or the donee of the power, ~~or,-if-the-taker-of-the-property-is--not then-finally-ascertained,~~

(b) An instrument renouncing a future interest may be filed not later than 6 9 months after the event ~~by--which~~ determining that the taker of the property or ~~the~~ interest is finally ascertained and his interest is indefeasibly vested.

(c) The ~~writing~~ renuciation must be filed in the court of the county where in which proceedings ~~concerning-the decedent's-estate-are-pending-or-where-they-would-be-pending if~~ have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the ~~writing-also~~ renunciation shall be

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delivered in person or mailed by registered or certified mail to the any personal representative or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk of the county in which the real estate is situated.

(3) Unless the decedent or donee of the power has otherwise ~~indicated by his will~~ provided, the property or interest renounced ~~and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced passes~~ devolves as ~~if~~ though the person renouncing had predeceased the decedent or, if the ~~person renouncing is one designated to take pursuant to a power of~~ appointment was exercised by a testamentary instrument, as ~~if~~ though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. ~~In every case the~~ A renunciation relates back for all purposes to the date of the death of the decedent or the donee~~, as the case may be~~ of the power.

(4) (a) The right to renounce property or an interest therein is barred by:

(i) ~~Any~~ an assignment, conveyance, encumbrance, pledge,

or transfer of property ~~therein~~ or interest, or ~~any~~ a contract therefor;

(ii) a written waiver of the right to renounce;

(iii) ~~or any~~ an acceptance of the property ~~by an heir devisee person succeeding to a renounced interest beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument~~ or interest or benefit thereunder; or

(iv) a sale ~~or other disposition~~ of the property pursuant to or interest under judicial ~~process~~, sale made before the ~~expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property~~ renunciation is effected.

~~(5)~~(b) The right to renounce ~~granted by this section~~ exists ~~irrespective of~~ notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

~~(6)~~(5) This section does not abridge the right of any a person to ~~assign convey~~ waive, release, disclaim, or renounce any property ~~arising~~ or an interest therein under any other ~~section of this code or other~~ statute.

~~(7)~~(6) ~~Any~~ An interest in property which exists on July

1, 1975, but which has not then become indefeasibly fixed both in quality and quantity or the taker of which has not then become finally ascertained, may be renounced after July 1, 1975, as provided herein. An interest which has arisen prior to July 1, 1975, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section as to which, if a present interest, the time for filing a renunciation under the Uniform Probate Code has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within 9 months after July 1, 1975."

Section 2. Section 72-2-203, MCA, is amended to read:

"72-2-203. Share of heirs other than surviving spouse. The part of the intestate estate not passing to the surviving spouse under 72-2-202, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take by representation;

~~(2) if there are surviving several children or one child and the issue of one or more children and any such surviving child dies under age and not having been married all the estate that came to such deceased child by~~

~~inheritance from the decedent in equal shares to the other children of the same parent and to the issue of any such other children who are dead by representation; and if at the death of such child who dies under age not having been married all the other children of his parents are also dead and any of them have left issue to the issue of all other children of the same parent; and if all the issue are in the same degree of kinship to such child, they take equally, but if of unequal degree then those of more remote degree take by representation;~~

~~(3)~~(2) if there is no surviving issue, to his parent or parents equally;

~~(4)~~(3) if there is no surviving issue or parent, to the ~~brothers and sisters and the children or grandchildren of any deceased brother or sister~~ issue of the parents or either of them by representation;

~~(5)~~(4) if there is no surviving issue, parent, ~~brother, sister~~ or ~~children or grandchildren of a deceased brother or sister~~ to the next of kin in equal degree, except that ~~where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote~~ issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate

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passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree, those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half."

Section 3. Section 72-2-213, MCA, is amended to read:

"72-2-213. Establishment of parent-child relationship. If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person ~~shall inherit as~~ is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.

(2) In cases not covered by subsection (1), a person ~~born out of wedlock is a child of the mother. That person is also a child of the father, if:~~

~~(a) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or~~

~~(b) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subsection (b) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.~~ is the child of its parents regardless of the marital status of its parents, and the parent and child relationship may be established under the Uniform Parentage Act, Title 40, chapter 6, part 1."

NEW SECTION. Section 4. Persons related to decedent through two lines. A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him to the larger share.

Section 5. Section 72-2-304, MCA, is amended to read:

"72-2-304. Self-proved will. (1) Any will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under

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official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ..... day of ....., 19....., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....
Witness

.....
Witness

THE STATE OF .....

COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of .....

(SEAL)

(Signed).....
(Official capacity of officer)

.....

(2) An attested will may~~, at the time of its execution~~ or at any time subsequent ~~date~~, to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of ~~this~~ the state where the acknowledgment occurs and evidenced by the officer's cerificate, under the official seal, attached or annexed to the will in ~~form and content~~ substantially ~~as follows~~ the following form:

THE STATE OF .....

COUNTY OF .....

We, ..., ..., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign

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for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

.....Testator
.....Witness
.....Witness

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., ...

(SEAL)

(Signed).....
(Official capacity of officer)
....."

Section 6. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or

money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 3 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed $3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a

person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derivec from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of accounts payable after the decedent's death under any public or private pension, disability compensation, death benefit,

or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first.

~~(c)--income~~ Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) ~~Property~~ property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

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(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser."

Section 7. Section 72-2-706, MCA, is amended to read:

"72-2-706. Charging spouse with property received -- liability of others for balance of elective share. (1) In the proceeding for an elective share, ~~property which is part~~ of values included in the augmented estate which ~~passes~~ pass or ~~has~~ have passed to the surviving spouse, ~~by testate or intestate succession or other means and which has not been renounced, including that described in 72-2-705(3)~~ or which would have passed to the spouse but were renounced, ~~is~~ are applied first to satisfy the elective share and to reduce ~~the amount~~ any contributions due from other recipients of ~~portions of~~ transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share

of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from or appointees of the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate."

Section 8. Section 72-2-707, MCA, is amended to read:

"72-2-707. Procedure for making of election. (1) The surviving spouse may elect to take his elective share in the augmented ~~net~~ estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 6 9 months after the ~~first publication of notice to creditors for filing claims which arose before the death of the decedent or within 1 year of the~~ date of death, or within 6 months after the probate of the decedent's will, whichever ~~time~~ limitation ~~first~~ last expires. However, the nonprobate transfers described in 72-2-705(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than 9 months after death. The court may extend the time for election as it sees

fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under 72-2-706. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 9. Section 72-3-907, MCA, is amended to read:

"72-3-907. Purchases from distributees protected. If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender ~~for value from~~ to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any ~~claims of the estate~~ interested person in the estate and incurs no personal liability to the estate or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed.

This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or

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whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section shall be prima facie evidence that such transfer was made for value.

For purposes of this section, the term purchaser includes any lessee or other person acquiring any interest in the property for value."

Section 10. Section 72-3-1005, MCA, is amended to read:

"72-3-1005. Final accounting required to close estate. (1) Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants and all other matters necessary to show the state of its affairs.

(2) Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings.

(3) If the personal representative is the sole residual beneficiary of the estate, no accounting need be made."

Section 11. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate or receipt showing taxes paid required to close estate. (1) In all probate proceedings

under this code, before final distribution to successors is made and before any petition is granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been filed with the clerk:

(a) a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid; or

(b) an agreement with the department of revenue for extension of time for payment of inheritance taxes; or

(c) a receipt from the county treasurer stating that any inheritance tax due on the assets of the estate has been paid.

(2) This section shall not prohibit such partial distribution as may become necessary in the course of administration."

Section 12. Section 72-4-201, MCA, is amended to read:

"72-4-201. Jurisdiction by act of foreign personal representative. (1) A foreign personal representative by ~~doing any of the acts described in part 3 or by~~ submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by:

(a) filing authenticated copies of his appointment as provided in [section 15];

(b) receiving payment of money or taking delivery of personal property under 72-4-306; or

(c) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual ~~submits--himself---personally---to---the jurisdiction--of--the-courts-of-this-state-in-any-proceeding relating-to-the-estate.~~

(2) Jurisdiction ~~which--arises--solely--from--receiving payment--of--money--or--taking-delivery-of-personal-property~~ under subsection (1)(b) is limited to the money or value of personal property collected."

Section 13. Section 72-4-301, MCA, is amended to read:

"72-4-301. Powers of foreign representative generally-- ~~limited--powers--upon--limited--compliance.~~ ~~(1)~~--Except--as ~~limited--by--72-4-308,--a~~ A domiciliary foreign personal representative who has complied with ~~72-4-303--and--72-4-304~~ [section 15] may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state, subject to any conditions imposed upon nonresident parties generally.

~~(2)--A-domiciliary-foreign-personal--representative--who has-complied-with-all-the-requirements-of-72-4-303(1)-except for--the--filing--of--an--inventory--and-appraisal-may,-when necessary-to-protect-the-estate-of--the--decedent--and--upon appointment--by-the-clerk-of-court,-exercise-the-powers-of-a special-administrator-described-in-chapter-3,-part-7.~~"

Section 14. Section 72-4-306, MCA, is amended to read:

"72-4-306. Payment of debt and delivery of property to foreign representative. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property or of an instrument evidencing a debt, obligation, stock, or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock, or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with a ~~certificate-from-the-clerk-of-the-court-for-the-county-where the-domiciliary-foreign-personal--representative--has--filed his--affidavit--as-described-in-72-4-303,-and-a-certificate from-the-department-of-revenue,-as--described--in--72-4-304,~~ proof of his appointment and an affidavit made by or on behalf of the representative, stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery."

Section 15. Section 72-4-308, MCA, is amended to read:

"72-4-308. Payment or delivery to foreign representative prohibited by resident creditor notice --

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~~court-order-to-allow-payment-or--delivery.~~ ~~(1)~~ Payment or delivery under 72-4-306 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid or the property delivered to the domiciliary foreign personal representative.

~~(2)--In-cases-under-subsection-(1),-the-foreign-personal representative-must-seek-an-order-of-the-court-in--which--he has-filed-his-affidavit-to-obtain-payment-or-delivery-unless the-notification-by-the-resident-creditor-is-withdrawn.~~"

NEW SECTION. Section 16. Proof of authority -- bond. If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

Section 17. Codification instruction. Sections 4 and 16 are intended to be codified as an integral part of Title 72, chapters 1 through 5 and chapter 16, part 6. The provisions of Title 72, chapters 1 through 5 and chapter 16, part 6, apply to sections 4 and 16.

Section 18. Repealer. Section 72-3-608, MCA, is

repealed.

-End-

the lawsuit would have the authority to go ahead with the case.

Mike Young, of the Insurance and Legal Division of the Department of Administration stated that by proposing this bill they were trying to hasten settlements in locations away from Helena, without having to travel to Helena and appear before a judge who had no experience with the facts of the case. He stated that they have settled fifty-three claims to date, and about twenty percent were lawsuits from other jurisdictions. Lewis & Clark district judges will still have to preside over all the claims not under litigation status.

There were no opponents to this bill, and no questions.

CONSIDERATION OF SENATE BILL 38:

AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION, INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE.

Senator Turnage introduced the bill, at the request of the Uniform Probate Code Committee, which functions as a part of the Bar Association of Montana. This bill is intended to bring the Montana Code into line with the national Uniform Probate Code.

Bjarne Johnson, representing the Montana Bar Association, stated that this bill would amend several sections of the Montana Uniform Probate Court. Introduced in the 1973 legislature, it states that if the estate is simple, and there are no problems, it can be settled out of court, rather than through a formal petition and a full hearing. About ninety percent of the probates now are filed informally in the attorney's office, and not made a part of the judicial proceedings. The Montana Uniform Probate Code was recommended to the 1974 legislature for passage and became effective on January 1, 1975. Mr. Johnson then outlined section by section the changes being proposed to update Montana's Codes.

At the end of this presentation, Senator Turnage said that he felt that the term "authentic copies" should be defined for the purpose of this bill, and suggested that this committee's staff person should begin research on this matter. He then offered for the record the letter of Mr. Johnson (Exhibit A, attached to these minutes), dated July 18, 1980, regarding the

amendments being proposed. Senator Turnage then reserved the privilege of objecting to portions of this bill at a later time, if this committee would delay its decision.

In response to a question by Senator Mazurek, Mr. Johnson established that the decision to propose these amendments represented a complete majority of the Bar Association, a fact verified by Ada Harlan. Senator Mazurek asked for clarification of the intended impact in the case of a natural parent whose relationship with the child had been terminated, yet who wanted the child to inherit from him. It was stated that the burden should be on the natural father to see that the child inherits from him, but that it would not be an automatic right of said child to inherit.

Senator Turnage then asked whether, if the adopted child inherits from adoptive parents and then dies, should the natural father then be able to automatically inherit said child's property. He felt that a one-way flow should be in existence -- from father to child, but not necessarily from child to natural father. Mr. Johnson said that this should be reviewed, and the intent established.

Senator O'Hara agreed to delay action on this bill until later so that clarifications could be made.

Senator Turnage said that any amendments to this proposed bill that are presented should be given to the Bar Association through Bjarne Johnson.

The meeting was adjourned at 11:23 a.m.

Senator Anderson
Chairman, Judiciary Committee

Senator O'Hara
Vice Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/12/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~			✓
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)			✓
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE

BILLS SB 38, SB 43, SB 75 VISITORS' REGISTER DATE 1/12/81

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Mildred Sellers	Lwv of Montana			
Sharlene Greenough	Lwv of Montana			
Tom Stoll	Dept. of Revenue	SB 38	✓	
Mike Young	Dept of Admin	SB 75	✓	
Curt Hagerty	Legislative Council	SB 38		
Cora L. Harlan	For Private Sec. St Bar	SB 38	✓	
Linda Anderson	Senior Advocates	SB 38		

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: BJARNE JOHNSON DATE: JAN 12-81

ADDRESS: P.O. 1645 Great Falls, Mont

PHONE: 761-3000

REPRESENTING WHOM? Mont Bar Assn

APPEARING ON WHICH PROPOSAL: Sen Bill 38

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

A

Exhibit A

LAW OFFICES OF
CHURCH, HARRIS, JOHNSON & WILLIAMS

I. W. CHURCH (1884-1972)
G. G. HARRIS (1883-1973)
BJARNE JOHNSON
CARTER WILLIAMS
WM. A. REID
DALE FORBES
CRESAP S. McCRACKEN
CHARLES C. LOVELL
DOUGLAS C. ALLEN
MILTON O. WORDAL
RICHARD F. GALLAGHER
DON A. LABAR
ROBERT P. GOFF
R. KEITH STRONG
W. BJARNE JOHNSON
MICHAEL B. ANDERSON
GREGORY R. SCHWANDT
KENNETH T. JARVI

P.O. BOX 1645 • GREAT FALLS, MONTANA 59403 • THIRD FLOOR NORTHWESTERN BANK BUILDING • PHONE (406) 761-3000

July 18, 1980

Mr. Jean Turnage
Attorney at law
Polson, Montana 59860

Dear Jean:

In looking over the changes made by the Montana Legislature Legislature at the time it adopted the Uniform Probate Code, most of the changes seem to have been dictated by local considerations. Since the time the Code was adopted, and certainly this is not unexpected, some problem areas have developed, and also the Joint Editorial Board, which is charged with monitoring the Code in the various states adopting it, have recommended several changes of the version of the Code originally submitted to us. The Montana Bar requested all attorneys finding some problem with the Code to advise the Bar of the problems encountered and to make recommendations for change. I think we will have a continuing committee for updating the Code and that perhaps we ought to improve some of the more troublesome areas first and leave the more minor changes for a future Legislature. It is with this thought in mind that we recommend for your consideration the following changes in the Uniform Probate Code:

(Any further reference to the Uniform Probate Code will be to the Uniform Probate Code Fifth Edition, with the official 1977 text, with comments, as published by West Publishing Company of St. Paul, Minnesota. Rather than retyping the various sections of the UPC referred to, I am simply xeroxing each of the pertinent sections with the Editorial Board comments. Each section will be numbered to correspond to the following numbering of code sections.)

1. Amend 72-2-101, MCA, by adopting Section 2-801 of the UPC, with the following two changes:

a. After the word "person" in sub-section (a), the words "or his personal representative".

I am advised that the National Conference of Commissioners were in substantial disagreement whether a personal representative should have the ability to disclaim. It seems to me there are circumstances where a death occurs within nine months of the first death, that substantial tax benefits could be obtained by the ability to disclaim. The current Montana statute permits a personal representative to disclaim.

b. The second change proposed in the UPC statute would be changing the time of filing from six months to nine months. The current Montana statute requires filing within six months, the federal gift tax statute enacted as part of the Tax Reform Act of 1976 requires filing within nine months from date of death. The time limits should be the same.

2. 72-2-203 MCA should be amended by adopting Section 2-103 of the UPC. The proposed amendment would limit intestate succession to tracing through a common grandparent. The comments by the Joint Editorial Board state the proposal better than I can. I think tracing through a common grandparent removes some of the liability we now have on trying to find heirs tracing through great grandparents or perhaps more remote ancestors. The amendment, if adopted, would substantially limit the exposure of the personal representative, as well as his attorney, and certainly if any testator were unhappy with the distribution of property under our intestate laws, he could change the devolution of property by a proper will.

3. 72-2-213 MCA should be amended by Section 2-109 of the UPC, and Section 2-114 of the UPC.

4. 72-2-705 MCA should be amended by Section 2-202 of the UPC. The change is recommended by the Joint Editorial Board and apparently removes some problems that have appeared in other states. I think that portion of the proposed UPC, sub-paragraph (3), should be modified by leaving out those words which I have lined out.

5. 72-2-706 MCA should be amended by adopting Section 2-207 of the UPC. The changes are recommended by the Joint Editorial Board.

6. 72-2-707 MCA should be amended by Section 2-205 of the UPC, which again is a recommendation made by the Joint Editorial Board.

7. 72-3-122 MCA should be amended by adopting Section 3-108 of the UPC. You will remember we struggled for some time on what to do with this particular statute. It is essentially a statute of limitations, and by the change we

made we may have eliminated the statute of limitations, and in any event we have created a lot of uncertainty in the Bar on the meaning of the statute as it now stands in Montana. I wonder if it wouldn't be advisable as a matter of policy to adopt the UPC version and give some finality to the period within which a will can be offered for probate. It may be that some people would consider three years too short. On the other hand, if a will does not appear within a three-year period, perhaps it shouldn't be permitted to be offered for probate. Other than wills from other states where we have an ancillary proceeding in Montana, I have never had a will produced after a three-year period from the date of death of the Montana resident, nor do I know of any case where a will was found after a three-year period. I think we should adopt the official UPC provision.

8. 72-3-608 MCA should be repealed. There is no corresponding UPC statute. We would, of course, defer to Tom Stoll's judgment. However, I do not see where the requirement for filing an inventory with the Department of Revenue gives the state any additional protection in collecting its revenues. It seems to me with the proviso that the personal representative is personally responsible for payment of tax, together with the right of the state to follow the property in anybody's hands, gives the State of Montana all of the security it can get for the payment of taxes and that the requirement of filing an inventory does not improve the state's position. I find the statute troublesome when we have perishable property that should be sold promptly, or cattle that should be disposed of quickly simply because there isn't anyone capable of taking care of them, and the requirement for disposal will not wait for a complete inventory of the assets of the estate. Simply advising the Department of Revenue that you have perishable property or cattle does not improve the Department's position as far as securing payment of the tax is concerned.

9. 72-2-304 should be amended by adopting Section 2-504 of the UPC. From correspondence with Judge Allen it appeared that some attorneys in the Billings area had failed to include an attestation and had simply used the statutory language for a self-proved will in the place of a proper attestation. On appeal to the Supreme Court, the Supreme Court held the will to be invalid without a proper attestation clause. In any event the Joint Editorial Board recognized some problems with the self-proved provisions as originally drafted by the UPC editors and have recommended the adoption of a new and different provision. I think with this amendment to tne existing MCA the problem noted by Judge Allen would be eliminated, as the new provisions for a self-proved will also include statutory provisions for an attestation.

10. 72-3-1006 MCA, which has no counterpart in the UPC, should be amended by adding the following language immediately following the word "revenue" in subparagraph (1):

> ....or an agreement with the Department of Revenue for extension of time for payment of inheritance taxes.

The UPC has permitted us to do a lot more tax planning than we were able to do under the earlier Code. The timing of the closing of an estate can have very important tax consequences to the estate and the beneficiaries in distributing through either profits or part of the profits or net operating loss to the heirs. If you have a net operating loss in the business, you can only increase the net operating loss for personal representative fees and attorney fees in the final return for the estate. As I understand it, the only way this net operating loss can be passed through is in the final return of the fiduciary, and of course if Montana statutes will not permit closing of an estate without payment of state inheritance taxes in full, we are in the position of either trying to take advantage of some advantageous income tax planning or taking advantage of recent Montana statutes permitting the extension of time for payment of state inheritance taxes. Under Code Section 72-3-1006 we cannot now do both and the statute should be amended to give us the additional alternative.

11. Chapter 4 of Title 72 MCA pertaining to foreign personal representatives and ancillary administration should be amended to conform in all particulars to the UPC. I know there was concern for tax revenues at the time Chapter 4 was being considered by the Legislature; however, I do not think the changes we made are of any help as far as the Department of Revenue is concerned. The changes have created a lot of confusion in the minds of the Montana Bar on what do you do with an ancillary administration, and I do not think there is much agreement among the attorneys on what the procedure should be. I have simply followed the practice of having the foreign personal representative appointed in Montana and then following through with the usual probate procedures on an informal probate. I think in almost all instances the only property we are concerned with in an ancillary probate is real property located in Montana, and the State, of course, has its lien for taxes until paid. I think we ought to adopt the UPC in its entirety without change.

Professor J. Martin Burke, of the University of Montana Law School, is working with me on this project. By a copy of this letter I am asking Martin to submit any additional changes or corrections that he thinks should be made, and also comment on the suggestions that I have made.

In preparing this matter I have tried to use the format that we recently discussed by phone, and of course it is

clearly understood by all of us in the Probate Section of the Bar that you will sponsor only such portions of the proposed changes as you deem appropriate.

Many thanks for the assistance, and with kindest regards I remain

Yours truly,

CHURCH, HARRIS, JOHNSON & WILLIAMS

BY: Bjarne Johnson
BJARNE JOHNSON

BJ1b

Encls.

cc: J. Martin Burke
Associate Professor of Law
James Thompson
Prof. Lester Rusoff
Tom Stoll

four. The previous roll call vote was reversed by a unanimous decision.

FURTHER CONSIDERATION OF SENATE BILL 14:

David Niss reported that there would be ninety-seven sections of law affected by the change in the felony penalty approved by the committee. He then said that he would check into the possibility of using a codification instruction to eliminate some of the work which would be required in amending so many sections of law.

DISPOSITION OF SENATE BILL 38:

Senator Anderson suggested that it become an interim matter to be handled next session. Senator Berg moved that the bill do not pass. His motion failed. Senator Crippen then moved that the bill be amended on page 6 as shown on the attached Committee Report, and his motion passed unanimously. Senator Mazurek then moved that the bill be further amended on pages 20,21, and 23, as shown on the attached Committee Report; and the motion passed unanimously. Senator Mazurek then moved that the bill DO PASS AS AMENDED, and the motion passed unanimously. David Niss was charged with drafting a statement of intent to accompany the Committee Report.

FURTHER CONSIDERATION OF SENATE BILL 286:

Senator Anderson said that he would discuss with Senator Van Valkenburg the problems the committee has with the repealers.

DISPOSAL OF SENATE BILL 174:

Senator Halligan moved that the bill DO PASS. Senator Crippen's vote was the only one in opposition to the motion.

FURTHER CONSIDERATION OF SENATE BILL 182:

David Niss will have complete by February 5 an amendment to remove any legal requirements now in state law that a licensed physician or nurse administer the lethal injection.

Chairman Anderson brought up the information he had collected relative to suggested committee bills which would possibly originate in this committee. Senator Berg moved that a bill or bills be drafted by David Niss relative to the matters brought up by the Jardine, Stephenson, Blewett & Weaver law firm, concerning Sections 39-3-206 and 214, MCA, and Section 71-1-320, MCA. His motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/04/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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STANDING COMMITTEE REPORT

February 4 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 38

Respectfully report as follows: That SENATE Bill No. 38

be amended as follows:

1. Page 6,
Following: line 13
Reinsert: "brothers and sisters and the children or grandchildren of any deceased brother or sister,"

2. Page 6, lines 15 and 16
Strike: "issue of the parents or either of them"

3. Page 6, lines 17 through 23.
Insert: All stricken language

4. Page 6, line 23 through page 7, line 11.
Strike: all underlined language.

5. Page 20, line 23.
Following: "section"
Strike: "13"
Insert: "15"

DO PASS.

continued

Chairman.

STATE PUB. CO.
Helena, Mont.

February 4, 81
19

6. Page 21, line 15.
Following: "section"
Strike: "15"
Insert: "16"

7. Page 23, line 20.
Following: "instruction"
Insert: "(1)"

8. Page 23, line 24.
Following: "16."
Insert: "(2) The code commissioner is instructed to codify section 16 and to renumber Title 72, chapter 4, part 3 in such a way that the sections of Title 72, chapter 4, part 3 are in the same numerical order as the corresponding sections of the Uniform Probate Code, 1977 edition, as promulgated by the national conference of commissioners on uniform state laws."

And, as so amended,
DO PASS

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE JUDICIARY

Date February 4, 1981 Bill No. SB 38 Time

NAME	YES	NO
Anderson, Mike		✓
O'Hara, Jesse A.		✓
Olson, S. A.		✓
Brown, Bob		✓
Crippen, Bruce D.	✓	
Tveit, Larry J.	✓	
Brown, Steve		
Berg, Harry K.	✓	
Mazurek, Joseph P.		✓
Halligan, Michael	✓	

Secretary Chairman

Motion: Do not pass

(include enough information on motion--put with yellow copy of committee report.)

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 4, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser in Room 437 of the Capitol. All members were present. Jim Lear, Legislative Council, was present.

SENATE BILL 38 SENATOR TURNAGE, chief sponsor, stated the purpose of the bill is to revise the Montana Probate Code. This bill will improve the function and operation of the code as it simplifies probate.

Pages 1-5 make it clear how an heir to an estate can disclaim the inheritance. If a person died and his spouse did not want the inheritance, the children could take it without going through the living spouse's estate. Page 5, section 2 deals with succession. It intends to shorten the number of people who would succeed to an estate if the deceased did not leave a will.

Section 3, page 7 deals with establishing parent-child relationship. It brings the Parentage Act and Uniform Probate Code together. Page 8 of the bill lists a new section that states the person who is related through two lines of relationship is entitled to only the larger share. This is possible because of mixed marriages where a person could claim two shares. Also, only one affidavit is needed instead of the present two. This will shorten paperwork.

Section 6 of the bill allows a spouse to disclaim what was left to him in a will. On page 17 the sole heir will not have to go through a long accountability.

J. C. WEINGARTNER, State Bar Association, supported the bill.

ADA HARLEN, State Bar of Montana, stated the bill puts some revenue into the state code and brings it into line with the national code.

TOM STOLL, Department of Revenue, stated the present law has not worked well. This would be of some value.

There were no further proponents.

There were no opponents.

SENATOR TURNAGE closed the bill.

REP. HANNAH asked who actually wanted the changes in the bill. ADA replied there are some problems in the state law that need to be revised. Housekeeping changes will allow the ability to use the code as it was intended.

REP. YARDLEY asked if the national codes were not federal law. It was answered correct, the UPC is the work product of the ABA and is a uniform law adopted in many states - not a federal law.

SENATE BILL 43 SENATOR BROWN, chief sponsor, stated this bill's purpose is to shift the burden of proof for suppression of confessions or admissions in criminal cases. EXHIBIT 1 was given to the committee.

The main purpose of the bill is to bring it into agreement with the courts decisions.

C. TWEETEN, Attorney General's Office, stated it is important the statutes are in compliance. He supports the bill.

There were no further proponents.

There were no opponents.

No questions were asked by the committee.

SENATE BILL 75 SENATOR BROWN, chief sponsor, stated this bill is to amend 2-9-303 authorizing district courts to approve compromise settlements against the state. The state has the authority to settle a claim only after is it proven in court. This would amend the court to provide that a hearing could be heard rather than having to come back to another county. It does not involve just a judge writing an order; a hearing has to be held. It makes it fair for the litigants.

MIKE YOUNG, Department of Administration, supports the bill. Currently the case has to be started all over with two judges. Hopefully, this will help the department and the claimants.

There were no further proponents.

There were no opponents.

No questions were asked by the committee.

SENATE BILL 63 SENATOR MAZUREK, chief sponsor of the bill, stated the bill's purpose is to conform the statutes regarding amendment of charges in criminal cases to case law. EXHIBIT 2.

C. TWEETEN, Attorney General's Office, supports the bill.

TOM HONZEL, County Attorneys, supports the bill. This bill would

however, large items have been lost. Recently, a $500 piece of engine removing equipment was rented and never returned. The borrower was traced to be in New York. The company is out of the equipment and has suffered the loss.

There were no further proponents.

There were no opponents.

REP. KEEDY questioned about theft. SENATOR MAZUREK replied it is difficult to prove that theft was the intent.

REP. KEEDY stated written notice containing the date and time is an element of defense, why? SENATOR MAZUREK replied the purpose is to insure that the defendant has knowledge of the time the equipment is to be returned. If it is not in bold print it is not right.

REP. EUDAILY asked if the penalties are in line with the bad check penalties. It was replied no, there are in line with the theft statute.

REP. KEEDY asked about page 1, line 12 purposely and knowingly. SENATOR MAZUREK replied that was at the request of Senator Towe. The concern expressed was if someone could knowingly not return the property. He may not have intended to return it or it may have been stolen from him, or he may have been hospitalized. If he were unable to return it knowingly alone could result in prosecution and conviction; knowingly and purposely would not.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:25 a.m.

SENATE BILL 38 REP. SEIFERT moved do pass.

REP. YARDLEY agreed with the motion as it makes it a much more simplified probate law.

The motion carried unanimously.

SENATE BILL 43 REP. CONN moved do pass.

REP. CURTISS thought this was a radical change for one court case. There is a possibility it could be overturned. It was replied that type of case has appeared before the Supreme Court.

The motion of do pass carried with REP. HANNAH voting no.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE
BILL 38 Date 3/4/81

SPONSOR Turnage

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
JC Weingartner	Hln.	State Bar	—	
Tom Stoll	Helena	Dept Revenue	✓	
Ada Harlen	"	State Bangmt	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81